

## DECISION MEMORANDUM

**TO:** COMMISSIONER KEMPTON  
COMMISSIONER SMITH  
COMMISSIONER REDFORD  
COMMISSION SECRETARY  
COMMISSION STAFF  
LEGAL

**FROM:** NEIL PRICE  
DEPUTY ATTORNEY GENERAL

**DATE:** MARCH 19, 2010

**SUBJECT:** FIRM ENERGY SALES AGREEMENT BETWEEN IDAHO POWER  
COMPANY AND CARGILL INCORPORATED, CASE NO. IPC-E-10-02

On January 29, 2010, Idaho Power Company (“Idaho Power” or “Company”) filed an Application with the Commission seeking approval, in accordance with *Idaho Code* § 61-503, RP 52 and the applicable provisions of the Public Utility Regulatory Policies Act of 1978, of its Firm Energy Sales Agreement with Cargill Incorporated (“Cargill”) under which Cargill would sell and Idaho Power would purchase electric energy generated by the Bettencourt Dry Creek Biofactory (“Facility”) located near Hansen, Idaho. *Application* at 1.

On February 25, 2010, the Commission issued a Notice of Application and Modified Procedure with a 21-day comment period. *See* Order No. 31014. Commission Staff was the only party to submit comments within the established comment period.

### THE AGREEMENT

“On January 22, 2010, Idaho Power and Cargill entered into a Firm Energy Sales Agreement (“Agreement”). . . .” *Id.* at 2, Attachment No. 1. The Agreement is for a 10-year term and utilizes “the Non Levelized Published Avoided Cost Rates as currently established by the Commission for energy deliveries of less than 10 average megawatts (“MW”).” *Id.* at 3

Idaho Power states that Cargill is an existing Schedule 86 partner providing energy to the Company and that it will utilize the “compliance data (i.e., nameplate capacity rating, engineering certification, insurance certificates, etc.) previously provided under the Schedule 86 requirements” to review and use for compliance with this Agreement if applicable. *Id.*

“The nameplate rating of this Facility is 2.25 MW.” *Id.* “Cargill will be required to provide data on the Facility that Idaho Power will use to confirm that under normal and/or average conditions the Facility will not exceed 10 average MW on a monthly basis.” *Id.* Any energy that exceeds 10 aMW per month, and that does not exceed the Maximum Capacity Amount, will be accepted but not purchased or paid for by Idaho Power. *Id.*

The Scheduled Operation Date for the Agreement is 30 days after the approval of the Agreement by the Commission. *Id.* The Agreement includes a formula for the assessment and calculation of Delay Liquidated Damages and associated Delay Security provisions if Cargill fails to achieve the targeted Operation Date. *Id.*; *see also* Article V of the Agreement. The Agreement states that it is effective once “the Commission has approved all of the Agreement’s terms and conditions and declared that all payments Idaho Power makes to Cargill for purchases of energy will be allowed as prudently incurred expenses for ratemaking purposes.” *Id.* at 4.

The Agreement places various conditions and requirements in order for Idaho Power to accept energy from Cargill. *Id.* Idaho Power states that if the Commission approves the Agreement the effective date of the Agreement will be January 22, 2010. *Id.*

The Agreement includes non-levelized published avoided cost rates consistent with past applicable IPUC Orders. *Id.* Interconnections with the Facility and applicable charges have been completed in accordance with the parties’ existing Schedule 86 agreement transacted in 2008. *Id.*

#### **STAFF COMMENTS AND RECOMMENDATION**

Staff reviewed the Agreement and found “that the rates contained therein are consistent with the currently-approved non-levelized published avoided cost rates for projects smaller than 10 aMW.” Staff Comments at 2. Staff noted that, with one exception, the essential terms and conditions “included in the Agreement are identical to those contained in recent PURPA contracts approved by the Commission.” *Id.* at 2-3.

Staff remarked that the amount of Delay Security required under the contract was the one unique feature that distinguished this Agreement from other similar types of agreements presented by Idaho Power to the Commission for approval. *Id.* at 3. The amount of Delay Security in this Agreement is “equal to the greater of \$45 per kW or the sum of three months’ estimated revenue.” *Id.* The total Delay Security is estimated to be approximately \$101,250. *Id.* In previous contracts, the Company required Delay Security in the amount of \$25 per kW. *Id.* “Delay

Liquidated Damages would be assessed if the Facility failed to come online within 90 days following the Scheduled Operation Date.” *Id.*

Staff commented that Idaho Power’s Firm Energy Sales Agreements for PURPA projects did not include a Delay Liquidated Damages penalty until around 2006. *Id.* Idaho Power has included the penalty as the result of several PURPA projects failing to achieve their scheduled operation date. *Id.*


The increase in the amount of Delay Security arose from Idaho Power’s estimation that \$25 per kW did not provide adequate damages for delay or a sufficient incentive for project owners to actually meet the scheduled operation date. *Id.* Idaho Power settled upon the \$45 per kW after researching “the security levels required by ten other electric utilities throughout the U.S. in their renewable energy procurements and contracts.” *Id.* Only one of the utilities sampled required security less than \$25 per kW, while the other nine utilities required security of at least \$50 per kW. *Id.* Staff believes that the \$45 per kW amount is reasonable because it is “high enough to cover possible damages and to motivate owners to complete projects on time, yet not so high as to make it too difficult for owners and developers to post the security and obtain project financing.” *Id.*

Staff also noted that Delay Security and damages for the Bettencourt Dry Creek project will not be an issue because the Facility is “already online and selling to Idaho Power under a Schedule 86 agreement. . . .” *Id.* Nevertheless, Staff commented on the deviation from prior agreements because Staff believes that “Idaho Power is seeking endorsement of the higher security requirement in this Agreement with the intent of including it in future contracts.” *Id.* at 4.

Staff recommends that the Commission approve Idaho Power’s Firm Energy Sales Agreement with Cargill and declare that all payments Idaho Power makes to Cargill for purchases of energy be deemed prudently incurred expenses for ratemaking purposes. *Id.*

#### **COMMISSION DECISION**

Does the Commission wish to approve Idaho Power’s Application for approval of its Firm Energy Sales Agreement with Cargill Incorporated?

  
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Neil Price  
Deputy Attorney General

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